

#3/Prior Art

1001.1096  
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Cesar Z. LINA

Serial No.: \*\*\*

Filed: November 2, 1999

Title: FOOT MOUNTED VENOUS  
COMPRESSION DEVICE

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§ Group Art Unit: \*\*\*  
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§ Examiner: \*\*\*  
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INFORMATION DISCLOSURE STATEMENT

Assistant Comm'r for Patents  
Washington, D.C. 20231

Sir:

In compliance with Applicant's duty of candor and good faith, under 37 CFR §1.56, the Examiner is requested to consider the following references and related information, submitted in accordance with 37 CFR §1.97, and thereafter make this entire disclosure "of record" in the file wrapper of the above-captioned application. A Form PTO-1449 is submitted herewith for the Examiner's convenience.

CERTIFICATE OF MAILING BY "EXPRESS MAIL" (37 CFR §1.10)

"Express Mail" Mailing Label No.: EL331367359US

Date of Deposit: November 2, 1999

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service, under 37 CFR §1.10, on the date indicated above and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

11/2/99  
Date:

Brian Goode  
Signature of Person Mailing

Brian Goode  
Printed Name of Person Mailing

### TIMELINESS OF STATEMENT

- ☒ This statement is timely under 37 CFR §1.97(b) as having been filed:
- ☒ within three months of the filing date of the application. 37 CFR §1.97(b)(1).
  - ☐ within three months of the date of entry of the national stage as set forth in 37 CFR §1.491 in an international application. 37 CFR §1.97(b)(2).
  - ☐ before the mailing date of a first office action on the merits. 37 CFR §1.97(b)(3).
- ☐ This statement is timely under 37 CFR §1.97(c) as having been filed after the period specified in 37 CFR §1.97(b) but before the mailing date of either a final action under 37 CFR §1.113 or a notice of allowance under 37 CFR §1.311 and accompanied by:
- ☐ a statement under 37 CFR §1.97(e), made herein below. 37 CFR §1.97(c)(1).
  - ☐ the fee set forth in 37 CFR §1.17(p). 37 CFR §1.97(c)(2). Although Applicant has at no time intended to deceive the Office, Applicant was nonetheless possessed of at least some item of information contained in this Information Disclosure Statement prior to the mailing date of a first office action on the merits. Further examination may be required in light of this information. To the extent that Applicant's failure to earlier disclose any item of information so possessed may be considered error, Applicant now admits error and hereby respectfully requests that disclosure at this time and payment of the requisite fee be accepted by the Office in cure thereof. *See Rohm & Haas Co. v. Crystal Chem. Co.*, 772 F.2d 1556, 1572 (Fed. Cir. 1983), *later proceeding*, 736 F.2d 688 (Fed. Cir. 1984) (outlining procedure for cure of inequitable conduct during original prosecution).
- ☐ This statement is timely under 37 CFR §1.97(d) as having been filed after the period specified in 37 CFR §1.97(c) but on or before payment of the issue fee and accompanied by (1) a statement under 37 CFR §1.97(e), made herein below; (2) a petition requesting consideration of this Information Disclosure Statement; and (3) the petition fee set forth in 37 CFR §1.17(i).

### STATEMENT UNDER 37 CFR §1.97(e)

- ☐ Each item of information contained in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing hereof. 37 CFR §1.97(e)(1).
- ☐ No item of information contained in this Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application or, to the knowledge of the undersigned after having made reasonable inquiry, was known to any individual designated in 37 CFR §1.56(c) more than three months prior to the filing hereof. 37 CFR §1.97(e)(2).

## **DISCLOSURE OF REFERENCES AND RELATED INFORMATION**

Although disclosed, nothing herein is intended as an admission of the character of any reference, or related information, as "prior art" to the invention of the above-captioned application or as being material to the examination of the same. Disclosure at this time is only intended to establish an incontrovertible showing of Applicant's full candor and good faith; under no circumstance should disclosure herein imply "materiality to patentability" as defined in 37 CFR §1.56(b).

In compliance with Applicant's duty, those references listed on the accompanying Form PTO-1449 are now disclosed.

All of the references and related information herein above disclosed are believed to be related at least to the broad field of art to which the invention of the present application pertains, although some references may be more pertinent than others. Although disclosed, nothing herein is intended as an admission of the character of any reference as prior art or as being analogous or pertinent to the invention of the above-captioned application; rather, disclosure is now made based upon the relevance apparent with the benefit of the hindsight provided by Applicant's own specification. In any case, Applicant respectfully requests that the Examiner make careful consideration of all that is disclosed for whatever relevance may actually exist.

## **RELATED LITIGATION**

Embodiments of the invention of the above-captioned patent application are presently manufactured in whole or in part by the Applicant KINETIC CONCEPTS, INC. ("KCI"), a Texas corporation with principal place of business in San Antonio, Texas. Such embodiments ("foot pumps" for purposes of this disclosure) are generally described in and covered by the claims of the present application. These foot pumps are marketed under the trademark "PLEXIPULSE" by a wholly-owned KCI corporation. KCI (herein including relevant subsidiary corporations) is presently a Defendant in consolidated Civil Action No. SA92CA0177-FB before the San Antonio Division of the United States District Court for the Western District of Texas. The Plaintiff in this litigation is Noavamedix Limited, which is believed to have a principal place of business in Hampshire, England.

Possibly relevant to this present application, the Plaintiff has alleged that KCI's foot pump products infringe four United States patents. At the commencement of the suit, the four patents were: U.S. patents No. Re 32,939 issued June 6, 1989; Re 32,940 issued June 6, 1989; 4,696,289 issued September 29, 1987; and 4,721,101 issued January 26, 1988. Each of these four patents has been or is presently under reexamination proceedings in the U.S. Patent and Trademark Office and the litigation has been stayed pending the outcome of reexamination.

**REQUISITE FEE**


- ☒ No fee is required with this filing.
- ☐ A check in the amount of \$ \*\*\* is enclosed herewith.
- ☐ Please charge Deposit Account No. 50-0489 in the amount of \$ \*\*\*. **A COPY OF THIS INFORMATION DISCLOSURE STATEMENT IS ATTACHED.**
- ☐ The Commissioner has been authorized to charge the requisite fee of \$ \*\*\* to Deposit Account No. 50-0489.

**GENERAL AUTHORIZATION TO CHARGE FEES:** The Commissioner is hereby authorized to charge any additional fee as may be required under 37 CFR §§1.16 and/or 1.17 at any time during the prosecution of the above referenced application, or credit any overpayment, to Deposit Account No. 50-0489, without further or more specific authorization.

Respectfully submitted,

Dated: 11/02/99

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INFORMATION DISCLOSURE STATEMENT  
(CONTINUED)

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